



POLICE DEPARTMENT CITY OF NEW YORK

March 11, 2016

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Hariton Marachilian
Tax Registry No. 935245
7 Precinct
Disciplinary Case No. 2015-14433

Charges and Specifications:

1. Said Sergeant Hariton Marachilian, while assigned to Midtown South Precinct, on approximately two (2) occasions between January 15, 2015 and February 15, 2015, wrongfully used a Department vehicle and Department MetroCard for an unauthorized purpose in that said Sergeant drove said vehicle and used said MetroCard for personal or other unauthorized business.
P.G. 203-06, Page 1, Paragraph 15 – PERFORMANCE ON DUTY
PROHIBITED CONDUCT - GENERAL REGULATIONS
2. Said Sergeant Hariton Marachilian, while assigned to Midtown South Precinct, on approximately three (3) occasions between November 1, 2014 and February 15, 2015, while on duty, was absent from his assignment without permission or police necessity and wrongfully failed to submit leave of absence reports (UF-28) for said absences totaling approximately six (6) hours and six (6) minutes.
P.G. 203-05, Page 1, Paragraph 1, 2 – PERFORMANCE ON DUTY –
GENERAL – GENERAL REGULATIONS
P.G. 203-10, Page 1, Paragraph 5 – PUBLIC CONTACT-PROHIBITED
CONDUCT – GENERAL REGULATIONS
3. Said Sergeant Hariton Marachilian, while assigned to Midtown South Precinct, on approximately three (3) occasions between April 1, 2014 and July 31, 2014, wrongfully made inaccurate entries in Department records in that said Sergeant improperly submitted overtime slips falsely indicating the time he left work.
P.G. 203-05, Page 1, Paragraph 4 – PERFORMANCE ON DUTY –
GENERAL –GENERAL REGULATIONS
P.G. 205-17, Page 1, Paragraph 1 – OVERTIME PERSONNEL
MATTERS
4. Said Sergeant Hariton Marachilian, while assigned to Midtown South Precinct, on or about and between January 1, 2015 and February 15, 2015, while on duty, on

two (2) occasions, wrongfully failed and neglected to make entries regarding his whereabouts or activities in his Activity Log, as required.

P.G. 212-08, Page 1, Paragraph 1 –ACTIVITY LOGS – COMMAND
OPERATIONS

Appearances:

For the Department: Samuel Yee, Esq.
Department Advocate's
One Police Plaza
New York, New York 10038

For the Respondent: Matthew Schieffer, Esq.
The Quinn Law Firm
Crosswest Office Center
399 Knollwood Road-Suite 220
White Plains, NY 10603

Hearing Date:
January 21, 2016

Decision:
Guilty

Trial Commissioner:
ADCT Nancy R. Ryan

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on January 21, 2016. Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the mitigation record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witness, I find Respondent, having pleaded Guilty, is found Guilty as charged.

SUMMARY OF EVIDENCE IN MITIGATION

Respondent's position in this case is that the four charges relate to de minimis mistakes he made in paperwork on a very few occasions and to two occasions where he left his on duty assignment and used either a Department Metrocard or a Department vehicle to visit his father.

With regard to the paperwork, Respondent admits that on a date in November, 2014, he did not properly account for 24 minutes of absence. (Tr. 17) He testified that he had been attending a preparation course for the Lieutenant's exam which took place every Thursday for approximately six months. For each date he filled out an absence report for the time he missed based on the course work. (Tr. 17-18) Respondent testified that out of all those occasions, there was only the one date which had a discrepancy and that discrepancy was for a total of 24 minutes. (Tr. 18) He further testified that this was a clerical error. (Tr. 18)

Similarly with regard to the charge in Specification 3, Respondent admits that he made inaccurate entries on three overtime slips. (Tr. 19) He testified that out of about a year and a half of his overtime slips for which he worked approximately 720 hours of overtime, the only inaccuracies were the three entries which totaled less than one hour. (Tr. 18-19) Again Respondent testified that the inaccuracies were merely clerical errors. He stated that he normally filled out the overtime slips the day after he worked the overtime and it seems like he "guesstimated" incorrectly on these three dates. (Tr. 20)

Specifications 1, 2, and 4 relate primarily to two dates when Respondent was on duty and left his assignment to visit his father. Respondent testified that on January 15,

2015¹, he was assigned as the Anti-Crime sergeant in the Midtown South Precinct. On that day he had between 2 and 5 police officers reporting to him. (Tr. 31-32) At one point during his tour, he received a call from his father. Respondent described his father as a 71 year old man who lived alone and [REDACTED] During the phone call, his father told Respondent that he had just learned that his granddaughter, Respondent's niece, had [REDACTED] Respondent testified that his father was, "taking the news very hard," as he himself was. (Tr. 13)

Respondent testified that after receiving the call he just went from Manhattan to Brooklyn to be with his father to support and comfort him. (Tr. 13-14) He used his Department Metrocard to go there. (Tr. 21, 33) Respondent did not notify any lieutenant, or his executive or commanding officers that he was leaving and going to Brooklyn. (Tr. 36) He does not remember if he told the other sergeants who were working in the precinct at that time or any of his subordinates that he was leaving his assigned duties. (Tr. 35, 37)

While Respondent thought he would just check in with his father and be back to his precinct in a short time, he ended up staying with his father for approximately four hours. He stayed longer than he initially anticipated in order, "to make sure my father was stable, first and foremost, make sure there wasn't going to be a health issue arising; you know, mainly, [REDACTED] God forbid, from the situation." (Tr. 14)

Respondent described his own state of mind from the time he got the call from his father as being in shock and sick to his stomach. (Tr. 13) He testified that he was a father figure to this niece. (Tr. 12) He further testified that he did not fill out a UF-28 for his

¹ The date is referred to as January 23, 2015, in cross-examination but the charges would cover either date.

absence when he returned to his precinct because he was still shocked and disgusted and it didn't even come to his mind to fill out the form. (Tr. 15) He also did not make any entries in his activity log which reflected that he went to Brooklyn. (Tr. 37)

With regard to the date of February 15, 2015², Respondent was again working and supervising approximately two to five police officers in the Midtown South precinct. (Tr. 40) During his tour of duty he had a conversation with his father in which he felt his father was distraught over the situation again. Respondent drove an RMP to his father's house in Brooklyn and brought his father some food. (Tr. 16, 21) Respondent again did not notify any lieutenant, or his executive or commanding officers that he was leaving and going to Brooklyn. (Tr. 41) He does not remember if he told the other sergeants who were working in the precinct at that time or any of his subordinates that he was leaving his assigned duties. (Tr. 41)

When he got to his father's house, Respondent testified that he dropped off the food, put away some photos his father was looking at and left. He was at his father's house for approximately 20 minutes. When Respondent returned to his precinct he did not fill out a UF-28 absence form since he was thinking about the "situation at hand" and the form wasn't a priority in his mind. (Tr. 16-17) He also did not make any entry in his activity log for the time he was in Brooklyn. (Tr. 41)

PENALTY RECOMMENDATIONS

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on July 1, 2004. Information from his personnel record

² The date is referenced as February 13, 2015, in cross-examination, but the charges would cover either date.

that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

The Department Advocate has asked this tribunal to impose a penalty of the loss of 30 vacation days. Based on the seriousness of a supervisor leaving his post on two separate occasions, as well as having additional paperwork errors, I find that this is a reasonable penalty.

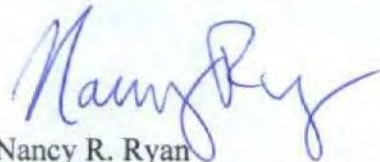
In this case Respondent left his subordinates unsupervised for approximately four hours on one occasion and approximately an hour on another occasion. He not only left the confines of his precinct but left the borough of Manhattan and travelled to Brooklyn. And in a further dereliction of duty, he failed to notify any of his supervisors that he was leaving. An abandonment of a supervisory position creates a situation with a grave potential for disaster. While in this case, it appears that no adverse consequences occurred from Respondent's actions, it is important that Respondent understand the seriousness of his misconduct.

It is also important that a significant penalty be imposed so that the Department can have a greater degree of confidence that Respondent will not leave a supervisory position in the same manner again. In Respondent's cross-examination, he initially referred to his failure to notify anyone that he was leaving as a clerical error he made since his priorities were with his family. (Tr. 35-36). While it is very understandable that one's family is a top priority, a supervisory position must not just be abandoned for hours as it was in this case with no notice being given to superiors, or request being made, to allow for coverage of Respondent's duties and responsibilities.

A 30 day loss of vacation days is also consistent with other cases. In *Disciplinary Case No. 7175/12*, signed December 27, 2012 (Porter), a case in which the subject notably was not a supervisor and was only missing on one occasion, an eight-year police officer with no prior disciplinary record forfeited 25 vacation days after a mitigation hearing for failing to report for a mandatory overtime assignment. The officer, who was unable to find a babysitter, did not notify the command that she would not be reporting for duty until she received a text message from the command two-and-a-half hours after her scheduled start time. Also in *Disciplinary Case No. 2306/10*, signed May 23, 2012 (Vinal), a seventeen-year police officer with one prior adjudication forfeited 30 vacation days for failing to appear for a scheduled overtime assignment after he had previously been notified about it. In addition, the officer pled guilty to using the incorrect date for an Activity Log entry.

Accordingly, I recommend that Respondent's penalty be the loss of 30 vacation days.

Respectfully submitted,



Nancy R. Ryan
Assistant Deputy Commissioner Trials

APPROVED

MAY 25 2016

WILLIAM J. BRATTON
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
SERGEANT HARITON MARACHILIAN
TAX REGISTRY NO. 935245
DISCIPLINARY CASE NO. 2015-14433

Respondent was appointed to the Department on July 1, 2004. In his last three evaluations, he received a 4.5 "Highly/Extremely Competent," 4.0 "Highly Competent," and a 3.5 "Highly Competent/Competent." [REDACTED]

[REDACTED] He has nine medals for Excellent Police Duty, and one medal for Meritorious Police Duty.

From September 4, 2009 to December 4, 2009, he was placed on Level 1 Force Monitoring for having received three or more CCRBs in a one-year period. He has no prior formal disciplinary record.

For your consideration.

Nancy R. Ryan
Assistant Deputy Commissioner Trials